

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 01-173

Chapter 7

GEORGE E. HUTCHINSON,

Debtor.

**MEMORANDUM DECISION**

**I. Facts**

This Chapter 7 bankruptcy case came before the Court for hearing on May 8, 2007, on the Trustee's objection to claim of Jesse G. Parden. (Doc. 241–Trustee objection; Doc. 242–Parden response). The Chapter 7 Trustee Tom McGregor and Jesse G. Parden were both present. For the reasons set forth below, the Trustee's objection is overruled and Parden's claim is allowed as filed.

This case was commenced as a case under Chapter 11 on January 10, 2001. (Doc. 1). The case was converted to a case under Chapter 7 on February 5, 2001. (Doc. 20). On August 3, 2001, the Clerk sent notice that the claims bar date was November 1, 2001. (Doc. 79). Parden filed Claim No. 96 on September 16, 2002, approximately 10 months after the claims bar date. Parden asserts that he is owed \$1,800 and that his claim is entitled to priority pursuant to 11 U.S.C. § 507(a)(3).<sup>1</sup> It is undisputed that distribution had not commenced by the time Parden filed his Proof of Claim.

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<sup>1</sup> Section 507 was recodified in 2005. Wage claims now have priority pursuant to section 507(a)(4). At the time Parden filed his claim, a wage claim was entitled to priority pursuant to section 507(a)(3).

## **II. Conclusions of Law**

This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(B). The Trustee contends that Parden's claim should be subordinated because it was filed late. The Trustee does not object to Parden's claim of section 507(a)(3) priority.

The Trustee's objection is governed by the provisions of 11 U.S.C. § 727(a)(1),<sup>2</sup> which provides, in part, as follows:

Except as provided in section 510 of this title, property of the estate shall be distributed—

(1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed before the date on which the trustee commenced distribution under this section.

### **Id.**

Under the version of section 727(a)(1) which was in effect at the time this case was filed, tardily filed priority claims were treated the same as timely filed claims, so long as the proof of claim is filed prior to the time the trustee commences distribution. Anderson v. Baer (In re Anderson), 275 B.R. 922, 925 (B.A.P. 10th Cir. 2002). It is clear that the Trustee in this case had not commenced distribution as of September 16, 2002, and for this reason, Parden's claim, though tardily filed, should not be disallowed or subordinated.

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<sup>2</sup> Section 727(a)(1) was amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. (Pub. L. 109-8). As this bankruptcy case was filed prior to the effective date of the act, it is the previous version of the statute which applies here.

### **III. Conclusion**

For the reasons set forth, the Trustee's objection is OVERRULED and Claim No. 96 filed by Jesse G. Parden is ALLOWED AS FILED. The Court will enter an order to this effect by way of a separate document.

Done this the 5<sup>th</sup> day of June, 2007.

/s/ William R. Sawyer  
United States Bankruptcy Judge